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SOUTHERN RY. CO. *v.* DAVES.

June 11, 1908.

[61 S. E. 748.]

1. Trial—Instructions—Refusal of Requests Covered by Charges Given.—Requested instructions, covered by others given, are properly refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 48, Trial, §§ 651-659.]

2. Same—Misleading Instructions.—Requested instructions, which are involved and calculated to mislead, are properly refused.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 46, Trial, §§ 569-576.]

3. Railroads—Precautions as to Person Seen Near Track.—It is not the duty of the engineer of a railroad train to stop when he sees a person approaching the track, but he has a right to assume that the person will not go upon the track in front of a moving train in plain view, unless there is something to show that the person is not going to stop, and the presumption exists in the case of an eight year old child as well as in case of an adult.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 1281, 1282.]

4. Same—Running Train Backwards—Negligence.—Whether it is negligence to run a locomotive backwards, or push cars ahead of a locomotive, without stationing a lookout on the tender or foremost car to signal its approach to a person on the track, depends upon the circumstances under which the locomotive or train is operated.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, §§ 1257-1258.]

5. Same.—The failure of a railroad company to have an outlook on the tender of a locomotive while running backwards held, under the facts, not to be negligence as a matter of law.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, § 1373.]

6. Same—Failure to Ring Bell and Sound Whistle.—The failure of those in charge of a train to ring the bell and sound the whistle upon approaching a crossing at which a person is injured by the train is not negligence for which the railroad company is liable, unless the failure is the proximate cause of the injury.

[Ed. Note.—For cases in point, see Cent. Dig. vol. 41, Railroads, § 1094.]